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[1](#)D. FERGUSON-ISN/CWC-DEL E-MAIL 11-12-08
[1](#)E. THE HAGUE 898

This is CWC-56-08.

SUMMARY

[1](#)1. (U) The three industry cluster meetings on November 13-14 were informative and somewhat productive. The Technical Secretariat (TS) presented their latest paper on Sampling and Analysis (S&A) and answered delegations' questions during the first meeting. Two new industry facilitations began: Schedule 2A/2A* low concentrations under Giuseppe Cornacchia (Italy), and enhanced OCPF declarations under Marthinus van Schalkwyk (South Africa). While states' views diverged predictably on both issues, delegates welcomed the new round of facilitations and most seemed ready to get to work. Both facilitators expressed their intention to continue facilitations in early 2009 and to hold consultations on a regular basis. The TS promised to publish a tentative schedule of meetings for the first half of 2009.

SAMPLING AND ANALYSIS

[1](#)2. (U) On November 13, the Industry Cluster Vice-Chair Amb. Benchaa Dani (Algeria) opened the first of the three scheduled Industry Cluster meetings. After giving brief introductory remarks, Amb. Dani turned the meeting over to Bill Kane (Head, Industry Verification Branch), who presented the recently released Schedule 2 S&A paper (S/719/2008). (Note: Copies of slides sent by unclassified email to Washington, ref B.) Gary Mallard (Head, OPCW Lab) followed Kane's presentation with an overview of the annex to the TS's S&A paper before opening the floor to questions from delegations.

13. (U) In response to Delrep's question on the site selection methodology for S&A, Kane said that the TS does not exclude any Schedule 2 sites from consideration; however, during the start-up period (September 2006 to March 2008), the TS focused on batch/multi-purpose Schedule 2 sites. Responding to a later follow-up question from Germany, Kane said that S&A had been geographically distributed during the start-up period but that geography was no longer a factor in selection. In 2009, the TS plans to conduct ten Schedule 2 inspections with sampling and analysis; these will be conducted partly at sites in States Parties that have not yet had S&A inspections and the rest among the 17 States Parties that have already hosted S&A inspections since September 2006.

14. (U) China noted that it sees S&A as an important tool and will be hosting its second S&A inspection soon. In response to China's question on using S&A during an initial inspection of a Schedule 2 site, Kane said that, while the CWC does not make a distinction between initial and subsequent inspections for S&A use, the TS will continue to focus on using S&A only during subsequent inspections. However, he did not rule out using S&A during initial inspections in the future.

15. (U) In contrast to China, Japan stated that it had been a hasty decision to continue using S&A after the start-up period without proper consultation, and noted that there had been some procedural problems. Japan noted that there had been some procedural problems

related to the two S&A inspections hosted by Japan since September 2006. Two problems highlighted by Japan included the inability to identify some scheduled chemicals using the OPCW Central Analytical Database (OCAD), and the inability to analyze some scheduled chemicals with the gas chromatograph mass spectrometer (GCMS), both of which are key components of sampling and analysis.

16. (U) France asked how the TS prepares for "false positive" identification of scheduled chemicals during S&A. Kane replied that TS chemical analysts consult open-source material to familiarize themselves with a selected site's chemical processes. They also run test samples in the OPCW lab to see if anything other than expected chemicals is identified. Mallard added that these preparatory experiments are used to answer any questions that arise during actual inspections and have helped the TS anticipate most problems, including "false positives."

17. (U) Turning to France's other questions on the costs of conducting S&A and any future plans for extending S&A use to Schedule 3 or OCPF inspections, Kane reported the average cost for S&A is approximately EUR 15,000 in addition to the normal costs for Schedule 2 inspections. He also said that the TS currently does not have any plans to extend S&A use to Schedule 3 and OCPF inspections, although he noted that the CWC allows for such an extension. Australia indicated its support for extending the use of S&A; Italy did also, but qualified that any extension should be done after careful review and consultation.

18. (U) Kane stated that in the 19 S&A inspections held to date, 11 had identified "false positives"; the majority of these were resolved through further analysis, but two cases had to be referred to a commercial chemical database. In addition to the "false positives," there were two instances where scheduled chemicals were discovered -- to the surprise of the facility -- resulting from process impurities. Iran raised concerns about the

reliability of the verification regime and asked how errors in S&A can be corrected to avoid so many "false positives" in the future. Kane and Mallard both said that "false positives" occur all the time and are an expected, inherent part of the process.

LOW CONCENTRATIONS

¶9. (U) Industry Cluster consultations continued on November 13 with the first meeting on Schedule 2A/2A* Low Concentrations chaired by facilitator Giuseppe Cornacchia (Italy). Cornacchia gave an introduction on the issue, stressing that the Scientific Advisory Board (SAB) declared the issue to be purely regulatory and political -- rather than scientific -- in nature. He asked delegations to be mindful that industry in many countries has called for a level playing field and harmonization, and that setting a threshold contributes to the common effort to strengthen the CWC without being aimed at any particular party. Cornacchia underlined his desire not to pick up where the last consultations on the issue left off in 2006 (EC-24/DEC/CRP.6), stating that time has since elapsed and that he welcomes new ideas and positions.

¶10. (U) Russia started the discussion by stating that it would like the clear differentiation between 2A and 2A* chemicals enshrined in the CWC to be maintained in regard to threshold limits. Citing a decision on transferring scheduled chemicals (C-

V/DEC.16), Russia suggested a limit in the range of 1-10%.

¶11. (U) After quoting Isaac Newton and noting its appreciation for the previous facilitator's work, the Iranian delegate stated that his government does not have a new position on the issue. Iran had supported the previous facilitator's proposed 0.5% threshold but would consider any new proposals. The delegate went on to express sentiments that were later echoed by a number of delegations (including Sweden and the UK), namely that there was a lot of merit in all of the previous work and discussion on this very complicated and technical issue and that it should not be wholly disregarded.

¶12. (U) China stated its readiness to play a constructive role and its openness to a level low enough to address proliferation concerns.

¶13. (U) Delrep, Germany, Japan, France and South Korea all stated their national thresholds are set at 30% but indicated flexibility and willingness to reach a compromise. Germany noted that it does not see a compelling reason to go below 30% as there have not been any problems at that level for more than ten years. However, the German delegate understood calls for level playing field and suggested a level between 1% and 30%. Citing the SAB report on low concentrations (SAB-IV/5), Japan suggested a level of 10% as a compromise.

¶14. (U) Italy stated its threshold is 0.5% and that a low limit is good due to the toxicity of the chemicals concerned. But, the delegate stressed his government's flexibility and desire to reach agreement on the issue. Italy's goal is for harmonization of regulations and fair competition for industry. Australia -- also with a 0.5% threshold -- echoed Italy's comments on the need for harmonization, stating that lack of a decision leaves a critical gap in the CWC.

¶15. (U) Canada stated its threshold is also 0.5% and said that this was based on the SAB report referred to by Japan; Canada said that, unlike Japan, it had opted for the low end of the spectrum offered by the SAB. While noting its openness to compromise, Canada said it wants to keep the previous facilitator's proposal (0.5% threshold) on the table for consideration. The Netherlands echoed Canada, calling for transparency and a level playing field, and indicated openness to a level between 0% and 1%. Finland also supported a threshold between 0% and 1%, calling for the level to be as low as possible.

¶16. (U) The UK and Switzerland each stated their threshold is 1%. Switzerland commented that a low threshold is necessary not to weaken the CWC. It also asked the TS to provide an impact assessment of applying various thresholds, specifically asking how many sites would be affected at each proposed level; Australia and Ireland supported the request. Germany said the information would be helpful but noted that data would be limited only to those who currently declare facilities and would therefore be incomplete; it suggested that States Parties might voluntarily provide information on undeclared sites to give a more complete picture. Cornacchia promised to have the TS present Switzerland's requested assessment and data at the next consultation, which he expects to hold in early 2009.

¶17. (U) Amb. Javits observed a disparity of views concentrated at the upper and lower ends of the spectrum and proposed the idea of any threshold within a percentage range as a compromise. He also

suggested that two papers -- one each from countries at either end of the scale -- be circulated to explain the reasons for their positions and specifically to address safety and risk concerns. Italy agreed with the suggestion, calling for the papers not just to look at thresholds but also to delve into process issues, including purification and isolation. Japan supported the idea of a range threshold, rather than a precise level, as a way to reach consensus.

OCPF DECLARATIONS

¶18. (U) The third Industry consultation was held on November 14, chaired by Marthinus van Schalkwyk (South Africa), to discuss enhancements to OCPF declarations. Van Schalkwyk opened the meeting by saying that enhancing OCPF declarations is one point at which to start to tackle the larger issue of OCPF inspections. Bill Kane (Head, Industry Verification Branch) made a presentation (ref B) on the TS's and DG's notes on OCPF declarations (EC-53/S/5 and EC-53/DG.11, respectively), updated since he first presented it in July (ref C). He said that the TS has updated the Declarations Handbook based on the DG's Note and that it will be released in early December. Kane also said that by implementing the proposed changes to declarations in the TS's Note, OCPFs could be divided into three categories of relevance, with the last two categories made up mostly of continuous and/or dedicated plants:

- High: approximately 700 (16%) inspectable sites;
- Medium: approximately 1400 (31%) inspectable sites;
- Low: approximately 2400 (53%) inspectable sites.

¶19. (U) After Kane's presentation, the Chinese delegate spoke in favor of directing OCPF inspections to the most relevant sites. He said that any refinement to the verification regime needs careful consideration and called for full discussion of all

proposals, including those in the DG's Note. China supported TS outreach efforts to assist States Parties in addressing problems with their declarations and also supported the annual replacement of OCPF declarations. However, he disagreed with the TS's claim that the DG's Note -- particularly updates to the Declarations Handbook -- could be implemented without a decision by the Executive Council (EC).

¶20. (U) Italy asked for more information on how the TS expects the proposals to be implemented and what it expects the results to be. The delegate commented that the numerical value attached to plant site characteristics (referred to as "R" in the TS's Note) will be critical. Italy went on to ask which factor is most relevant in the A-14 algorithm and whether the updated Declarations Handbook would have a new table of relevant product codes (SITCs). Kane responded that each factor is relevant to the algorithm; Steve Wade (Head, Declarations Branch) said that the TS did not plan to include a new table of SITCs.

¶21. (U) Switzerland referenced its national paper on OCPF plant site characteristics and noted its support for the TS's Note. The Swiss delegate called for the reduction of inspections at non-inspectable sites and noted that the proposals would aid this goal, with Qnoted that the proposals would aid this goal, with benefits offsetting any burdens. Australia also supported both the DG's and TS's notes, saying that both will work together to address inspecting the most relevant OCPF plant sites.

¶22. (U) India said that the two notes mark a departure from the Second Review Conference (RevCon) by imposing additional declaration obligations and asked whether the voluntary use of SITC sub-codes by some States Parties (per the DG's Note) would adversely affect those States Parties not using them. Echoing Switzerland and Australia, France countered that industry can deal with SITC sub-codes and would not be burdened by them, especially when balanced against reducing wasted inspections. France noted its readiness to implement the proposals voluntarily.

¶23. (U) Germany also spoke in favor of the DG's Note and said it did not foresee any major problems in implementing it voluntarily. While agreeing on the need to focus inspections on the most relevant sites, on the TS's Note, Germany agreed with Italy on the importance of defining a value for "R" and also noted there might be legal problems with adding questions about plant site characteristics. Germany also posited that there might be exponential effects from all of the changes to the OCPF verification regime -- from the new site selection methodology to declarations enhancements -- and that these will need to be considered aggregately.

¶24. (U) Canada and the UK both expressed support for both notes and stated that they each had taken steps to implement them as soon as possible, starting with their 2008 declarations. Japan, supporting the voluntary use of SITC sub-codes, asked when national authorities would need to start using them. Wade responded that, due to their voluntary nature, there is no specific implementation date for using the sub-codes. Canada asked two separate times when it could expect to benefit from using the sub-codes. Kane, citing the DG's Note (para 45, EC-53/DG.11), confirmed that the TS will start incorporating the sub-code into the OCPF site selection process in 2009 for 2010 inspections. China acknowledged that some states would derive benefits from implementing the proposals but, echoing India's earlier remarks, that

should not be at the cost of other States Parties. It stressed the need to know the full impact -- including costs and benefits -- of using the sub-codes.

¶25. (U) On the TS's Note, Japan asked about possible legal implications of amending the declaration form. Japan also said that the impact of adopting the proposal needed further consideration. Mexico and the Netherlands each noted their general support for the two notes and called for further discussion and consideration; the Netherlands reiterated Germany's call for information on the impact of the proposals.

¶26. (U) Delreps also welcomed the two notes but asked the TS to provide more information on the true benefit of the Proposals. Drawing on guidance (ref CD, Delreps tabled a proposal to replace the sub-codes with a catch-all code for bulk chemicals. Delreps also asked if the TS had considered how new declaration information -- specifically the verification of equipment characteristics for an entire plant site -- would be incorporated into the inspection regime.

¶27. (U) Iran interjected that a thorough conceptual discussion needs to take place before even discussing the technical aspects of either note. It claimed that the consultation's mandate came from the RevCon report (para 9.65, RC-2/4), saying on the one hand that it was necessary to keep the consultation's scope and discussion within that mandate, while going on -- and ignoring the blatant contradiction -- to say that discussion should not be limited to the DG's and TS's notes and that it was open to other proposals -- including the U.S. proposal on a code

for bulk chemicals. It rejected discussion of the TS's Note as premature, falling outside of the consultation's mandate because the proposal violated the RevCon report by imposing additional obligations. Therefore, Iran concluded that the proposal is no longer on the table for consideration.

¶28. (U) Amb. Javits countered that both notes were prepared in response to the RevCon and clearly complied with the request in para 9.65 (RC-2/4) for the DG and TS to submit proposals to direct OCPF inspections towards facilities of greater relevance. He also stated that additional bureaucratic obligations do not represent a real burden: the real burden is wasted inspections at non-inspectable sites. France and Germany both agreed, with Germany stressing that all proposals are on the table for consideration, whether or not they are accepted by all delegations.

¶29. (U) Van Schalkwyk wrapped up the meeting, first noting his mandate came from the title of the two notes ("enhancement of OCPF declarations"), and then re-capping key points of the discussion. He noted strong support for the TS's and DG's notes although some delegations still have questions and concerns about them. He also noted general support for focusing OCPF inspections despite differing ideas on how to do this.

OTHER INDUSTRY MEETINGS

¶30. (U) After the Industry Cluster consultation on November 14, visiting Commerce officer Joe Cristofaro and Delrep met with Bill Kane (Head, Industry Verification Branch) and Peter Boehme (Senior Industry Officer, IVB). Delreps asked about thresholds for OCPF mixtures. Kane said that the TS

has not considered the issue and has not received any input from other States Parties, nor are they familiar with other States Parties' regulatory requirements; however, he promised to give the issue some thought. Cristofaro next asked about mixed plant sites and whether the results of one type of inspection (e.g., Schedule 2) are factored into the information available on the plant site. Kane and Boehme explained that data essentially are kept in "silos." The TS has not "connected the dots," so inspection information does not affect selection of other plants on the same site.

¶31. (SBU) Kane then turned to sequential inspections in the U.S., asking if there is any flexibility in the current distance limit of 150 miles between inspected sites. Cristofaro explained the U.S. position, indicating that experience with sequential inspections this year affirms that 150 miles is the farthest distance that can be reasonably accommodated to allow for sequential inspections within the same week.

¶32. (SBU) Turning to Schedule 3 inspections, Cristofaro noted that the U.S. has had a larger-than-expected increase in Schedule 3 inspections in 2008. While an increase in OCPF inspections had been anticipated due to the new site selection methodology, a similar increase in Schedule 3 inspections had not been planned due to the static number of Schedule 3 inspections. Kane responded that 50% of Schedule 3 facilities have been inspected in approximately 30 States Parties; eight States in approximately 30 States Parties; eight States Parties still have sites yet to be inspected, with China and the U.S. having the largest share. Kane explained that -- due to the re-inspection rate being limited to 5% of the annual number of Schedule 3

inspections -- more and more Schedule 3 inspections will be focused on a decreasing number of States Parties. He described the situation as a train wreck coming the next 3-4 years and suggested that it could be avoided either by increasing the re-inspection rate or by decreasing the overall number of Schedule 3 inspections.

¶33. (SBU) Delreps reiterated the U.S. proposal to replace the SITC sub-codes (in EC-53/DG.11) with a catch-all code for bulk chemicals (ref D). Boehme thought the proposal was a useful simplification; Kane noted that it was an interesting proposal but confirmed that the updated Declaration Handbook would soon be printed, with no chance of stopping the process. However, he recognized the need to update the Handbook on a more regular basis and suggested that the U.S. proposal might be considered for the next update. (Del comment: Del will continue to push for inclusion of the U.S. proposal in the updated Declarations Handbook before its release.)

¶34. (SBU) After meeting with Kane and Boehme, Delreps briefly met with Susan Atego (Senior Policy Officer, Policy and Review Branch) to discuss the U.S. Schedule 1 Facility Agreement deferred from the last EC session (ref E). Atego told Delreps that no States Parties -- including Iran -- had informed the TS of concerns with or questions about the facility agreement, noting that the agreement had obviously been deferred for political reasons. Cristofaro asked whether the agreement could be put on the agenda of the special EC meeting for consideration before the upcoming Conference of the States Parties (CSP). Atego promised to look into the possibility. Atego also told Delreps that Iran had not yet provided any justification for changing its Schedule 1 Facility Agreement to a "facility arrangement" (ref E).

135. (U) Javits sends.
FOSTER